IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9082 OF 2004

The Warana Project Circle & Anr..... Petitioners.

Versus

Hanmantrao Vasantrao Bagal..... Respondent.

Mr. D.A.Patil, AGP for the Petitioners.

Mr. M.S.Topkar for the Respondent.

CORAM : S. C.DHARMADHIKARI, J.

DATED : 20TH DECEMBER, 2004.

P.C.:

Two contentions have been raised by the learned Asstt. Government Pleader appearing in support of this petition impugning the order passed by the Member, Industrial Court, Kolhapur in Complaint (ULP) No. 561 of 1994.

2. The first submission is that the Warana Project Circle, Warana Bhavan, Kolhapur and the Doodhganga Canal Division No.1, Kolhapur is not an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. The second submission is that the Court below ought to have taken into consideration the fact that there is no reversion in the instant case at

all.

3. The respondent was appointed as a typist in 1974. At his request, he was posted as a tracer which is equivalent to the post of typist. In 1994, it was brought to the notice of the petitioner that the change as made is contrary to the Maharashtra Civil Services Rules, 1981 and therefore by a communication dated 12th December, 1994 the Petitioners repatriated Respondent to the post of typist. Once the post of Typist is equivalent to the post in question then there is no reversion according to the learned Counsel.

4. I am unable to accept both these submissions. In so far as the submission that the concerned department is not an industry, it appears that the said point though raised in the written statement, was not specifically urged before the court below. No issue has been framed and no arguments have been advanced. That issue can be left open for consideration in an appropriate case. The ancilliary of this submission that the remedy of the Respondent was to approach the Maharashtra Administrative Tribunal and not the Industrial Court also need not be considered in the peculiar facts of this case.

5. The second submission on merits of the matter is totally untenable. The Court below has on material placed before it specifically observed that the Respondent was appointed as a typist on 18th June, 1974 and thereafter posted as a clerk on 7th March, 1979. Since he possessed the requisite qualification of the tracer, he was appointed to the post of tracer with effect from 7th May, 1982. He was enjoying the benefits of the revised pay scale and rendered more than 12 years services and therefore was entitled for further benefits including time bound promotion. Suddenly, the Respondent was told to work as clerk-typist vide letter dated 12th December, 1994.

6. The court below has taken note of the fact that neither any intimation was given prior to this communication nor the Respondent was given any opportunity by bringing to his notice the relevant government communications. Further, no reasons have been assigned in the order dated 12th December,1994. Once the action of calling upon the Respondent to work as a clerk-typist after he was granted the benefits as a tracer for more than 12 years is nothing but a reversion, then it was justifiably held to be unfair labour practice and quashed and set aside by the court

below.

7. That apart by virtue of interim order the Petitioners have allowed Respondent to work as a tracer. Therefore, this is not a fit case where extra ordinary and equitable as well as discretionary jurisdiction under Article 227 of the Constitution of India can be invoked by the Petitioners. There is no error apparent or perversity in the finding of facts recorded by the court below.

8. Petition is, accordingly, dismissed.

Sd/-

(S. C. DHARMADHIKARI,J.)